

Swedish Bankers' Association

Svenska Bankföreningen

POSITION PAPER
26th June 2008

CESR, CEBS and CEIOPS
(the three Level 3 Committees, 3L3)

By e-mail to:
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Consultation on common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees

General views

Swedish Bankers' Association welcomes this possibility to express its opinions of the abovementioned Regulation on the information on the payer accompanying funds (SR VII, below "the Regulation") to CESR, CEBS and CEIOPS (below "3L3"). There are still according to the Association a number of outstanding issues regarding the interpretation of the Regulation which troubles the credit institutions in Sweden. The Association has engaged itself in several consultations with the Ministry of Finance and the Financial Supervisory Authority as well as the Financial Intelligence Unit within the National Police Board with the aim to seek guidance in a number of issues in relation to the Regulation. None of the before mentioned authorities have stated that they will issue any recommendations in connection to the Regulation, which the Association believe would have been helpful for the credit institutions. On the other hand a purely national recommendation and interpretation would not have solved all the different outstanding issues. The first priority must be to seek a common understanding, at least within the EU but even better globally, as regards the interpretation of the Regulation. Therefore the initiative by 3L3 by launching this consultation is welcomed as a first step towards creating such a common understanding. Please find below the Associations views on the different questions raised in the consultative document.

The Consultation

Section 3.1 - The PSP becomes aware, when receiving the transfer, that it is incomplete

The question whether or not the credit institutions as a PSP would be *allowed to execute the transfer* before asking for complete information have been somewhat unclear in Sweden so far. The credit institutions have not seen any workable solution other than that the PSP executes the transfer and *then* asks the PSP of the payer for complete information. The Association therefore welcomes the clarification in the consultative document that the PSP may either execute the transfer *or* hold the funds.

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*Procedures for the PSP in relation to following up requests for complete information**Question 1*

In the consultative document market participants are invited to express their preference between two options. Either following stipulated time limits and deadlines for the PSP of the payer to fulfil (option A) *or* set up procedures and processes in order to complete an appropriate follow up to its request for complete information and to demonstrate to its supervisor that these are effective and adequate (option B).

Swedish Bankers' Association prefers option B. It should be sufficient that the credit institutions demonstrate to the Financial Supervisory Authority that procedures and processes put in place are effective and adequate. This solution is more flexible than the option A, which on its surface is perhaps somewhat more predictable, but on the other hand more rigid.

Question 2

In the consultative document market participants are invited to express their preference between two options. If the PSP does not receive a satisfactory answer to its request it should proceed to the follow up to request which includes sending reminders within stipulated time limits and deadlines for the sending PSP to follow including an indication that the transfer is pending (option A). *Or* defining policies and set up procedures in order to complete an appropriate follow up to its request and in particular define its reaction to the absence of a valid answer and to demonstrate to its supervisor that these are effective and adequate and are effectively applied (option B).

Swedish Bankers' Association would like to emphasize that the credit institutions don't see it as a workable solution, at any time or case, to *hold* the funds. The transfer of funds, domestically or cross-border, is a true mass business. If the situation, for some reason, should call for such an obligation to hold the funds the Association is in favour of option B.

*Identifying regularly failing PSP: s**Question 3*

In the consultative document market participants are invited to express their views on what criteria determine whether the PSP of the payer has regularly failed to provide required information and some examples of such criteria are presented.

Swedish Bankers' Association is of the opinion that rules on "Best practices" and "Know-your-customer" should be the landmark here. The banks have already in place risk-management-systems which they can draw experience from. It is however temp-

ting to try to define very precise rules and criteria beforehand which could lead *either* to that the PSP has followed the Regulation *or* has failed to comply with article 9.2. In reality the situations are more complex than that. The Association considers it to be better to follow best practices as they will develop. The most important thing in this context is to develop rules on best practices on an EU- and global (FATF) level. This will guarantee a level playing field. In Sweden the Association is a forum for exchange of views between the credit institutions in this regard. On an EU-level the European Banking Federation and the European Payments Council are important players as well (see also below the answer to question 4).

Coordination mechanism for monitoring regularly failing PSP: s

Question 4

In the consultative document market participants are invited to express their views on the merits of creating a Coordination mechanism which could act as a body for monitoring regularly failing PSP: s and on the way it could be organised and so on.

Swedish Bankers' Association considers that it is important that these issues are discussed in international forums. On an EU-level the European Banking Federation and the European Payments Council are important players and can be forums for these discussions. As regards separate PSP: s it is however paramount to consider banking and business secrecy as well as the competition between the institutions involved. This may hamper the willingness on institutions part to share information, in any forum. The effects of such a coordination mechanism must therefore be subject of more analysis. However, the Association is of the opinion that such mechanism must be a task for the public authorities, which can issue "black-lists" which the credit institutions can follow. Moreover, such a mechanism should be an existing forum or body. It's not necessary to create a new one only for this purpose. The credit institutions will of course have the ultimate decision to perhaps terminate the business relationships with other PSP: s, but that decision should be supported by the appropriate authority.

Question 5 – other views

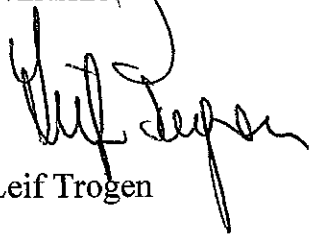
In the consultative document market participants are invited to share their current practices against some examples.

Swedish Bankers' Association is of the view that an intermediary bank should not fall under all of the effects of the Regulation. We believe it's the account-holding credit institution which will have the obligation to ask for complete information, via the intermediate bank, at the PSP of the payer. The most important factor to consider is that the information on the payer will be presented in any case.

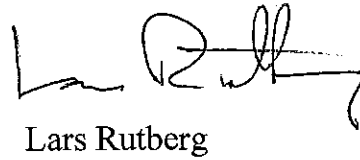
Swedish Bankers' Association would in this context also like to draw the attention to the fact that it must be sufficient to have information in field 20 in the SWIFT standard

message and that this meets the obligation according to the Regulation for a “unique identifier”. However, in non EU-payments there must be information on the bank account in field 50 in the SWIFT-message.

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